

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.133 of 1994

Tuesday, this the 24th day of January, 1995.

CORAM

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

N T Joseph,
Commercial Inspector Gr.III,
Southern Railway,
Tiruvananthapuram Division.

...Applicant

By Advocate Mr K Ramakumar.

Vs

1. Union of India represented
by the General Manager,
Southern Railway,
Madras.

2. The Divisional Railway Manager,
Southern Railway,
Trivandrum.

3. The Divisional Personnel Officer,
Southern Railway,
Trivandrum.

4. Shri S Muthuramalingum,
Commercial Inspector(Claims),
Southern Railway,
Madras.

5. The Chief Personnel Officer,
Southern Railway,
Madras.

...Respondents

By Advocate Mrs Sumathi Dandapani for Respondents 1 to 3 & 5.

By Advocate Mr KA Abraham for Respondent-4.

O R D E R

P.SURYAPRAKASAM, JUDICIAL MEMBER

Applicant who is presently working as Chief
Commercial Inspector Grade-II has filed this application
for the following prayers:

"i. To declare that the applicant is eligible
for promotion as Commercial Inspector Gr.III
with effect from 1.3.1985 from which date
the 4th respondent, his junior has been promo-
ted as Commercial Inspector Grade-III.

"ii. To direct Respondents 1 to 3 to treat the applicant as having been promoted on a regular basis as Commercial Inspector Grade-III with effect from 1.3.1985 and give him further promotions from the date of promotion of his immediate Junior Shri R.Ramesh Kumar in the cadre to Grade Rs1600 -2660 on 15.6.87 and to the Grade 2000 - 3200 with effect from 4.11.87 and in Grade 2375 - 3500 with effect from 1.3.93 and also grant him all other consequential financial benefits arising on the above promotion is legally denied to him."

2. The short facts of the case are that the applicant who was working as Commercial Inspector in the TCR Division of the Southern Railway was superseded by the ad-hoc promotion given to the 4th respondent on 1.3.85 and as against the same he filed OA 358/86 wherein an order was passed directing the authorities to reassess the merit of the applicant and promote him, if any junior has been promoted. And later in MP 352/90 in CCP 4/90 it was held by this Hon'ble Tribunal that since there are only 5 vacancies and the applicant was ranked as 6th person, he should be considered if there is any regular 6th vacancy. Thereafter, he was given promotion from 1.2.87 on the 6th regular vacancy, and has been promoted to the present post permanently. The question regarding promotion ought to have been effected from 1.3.85, the date on which 4th respondent was promoted was left open, and the Tribunal held that he may file separate O.A., if he is so advised for the same purpose. In view of the direction, applicant filed O.A.37/91

for the relief which is more or less similar to the present one except with regard to the second prayer wherein dates have been given with regard to various future promotions he would have had had he been appointed regularly to the said post from 1.3.85.

3. In the said O.A. there was a difference of opinion in the Bench, and the matter was referred to the Hon'ble Vice Chairman for his opinion with regard to the question namely:

"Having regard to the facts and circumstances of the case whether the application should be disposed of with direction for reconsideration of the claim of the applicant or it should be dismissed without granting any relief."

The Hon'ble Vice Chairman sitting as Third Member approved the stand taken by the Judicial Member and returned the reference with the following observations:

"In the conspectus of facts and circumstances, agreeing with my learned brother N Dharmadan, the Hon'ble Judicial Member, I dispose of the reference by observing that having regard to the facts and circumstances of the case, the application should be disposed of with a direction for reconsideration of the claim of the applicant keeping in view the observations made by Hon'ble Shri N Dharmadan and me."

4. In view of the opinion expressed by the 3rd Member, Hon'ble Vice Chairman, the following order of

the Bench was made on 8.7.92:

"...the interest of justice will be met in this case if we dispose of this application with a direction to the respondents 2 and 3 to consider the claim of the applicant for promotion to the post of Commercial Inspector Grade-III with effect from 1.3.1985 and further promotions in case if he is found eligible for the same in accordance with law. This shall be done as early as possible without any delay, after giving an opportunity of being heard to the applicant and the fourth respondent."

5. Later the applicant filed CPC 85/93 for not carrying out the said order within the stipulated time. The Department has given the benefit of promotion to the applicant as Commercial Inspector in the scale of Rs 1400- 2300 with effect from 1.3.85 on ad-hoc basis against the vacancy against which the 4th respondent was promoted. On the basis of the order, the contempt petition was closed. Now the present application has been filed for almost the ^{similar} ~~prayers~~ as found in OA 37/91 with a direction i.e., the said promotion given to the applicant with effect from 1.3.85 on ad-hoc basis should be treated as a permanent one or a regular promotion and the consequential benefits also must be given.

6. Respondents averred that the 4th respondent was given the promotion under Annexure R3 on 1.3.85 which is only an ad-hoc promotion in place of Shri NK Narayanan Namboodiri who is in the sick list and with the

condition that the above posting will cease as and when ^W Narayanan NK/Namboodiri joins duty. The posting is ordered purely on ad-hoc basis and will not confer him any claims for continuation, retention, seniority etc. Further more, there was no regular vacancy on that date (1.3.85). The Tribunal also held in O.A.358/86 dated 21.5.90 that:

"Since the applicant was ranked as 6th person, he should be considered, if there is any regular 6th vacancy within the panel period."

And as such, he was appointed in the regular 6th vacancy when it arose on 1.2.87. The promotion that has been given to the 4th respondent on 1.3.85 was purely on ad-hoc basis and only later the Tribunal held that the adverse remarks entered in the confidential report of the applicant was not to be expunged and promotion of his junior Muthuramalingum could not be questioned since he has not been impleaded as a respondent, and the applicant cannot claim any benefit at his cost, and further the Department stated by marking the plaint of O.A. 37/91 wherein the following prayers were made:

"To declare that the applicant is eligible for promotion as Commercial Inspector Grade-III with effect from 1.3.85 from which date the 4th respondent, his junior has been promoted as Commercial Inspector Grade-III."

Therefore, at the worst he can claim only the benefit that has been given to the 4th respondent on 1.3.85 namely, ad-hoc promotion and on a plain reading of the

allegation also mean that he is seeking an ad-hoc promotion alone, and as such the ad-hoc promotion has already been granted to the applicant with effect from 1.3.85 later by an order of the department. Therefore, the present application which has been filed for treating the said ad-hoc promotion from 1.3.85 as a regular promotion and the consequential benefits must be turned down since there is no merit at all in the claim.

7. Applicant relied on the order passed by the Bench in OA 37/91 which runs as follows:

"...the interest of justice will be met in this case if we dispose of the application with a direction to the respondents 2 and 3 to consider the claim of the applicant for promotion to the post of Commercial Inspector Grade-III with effect from 1.3.85, and further promotions in case if he is found eligible for the same in accordance with law."

8. The 3rd Member also mentioned in the judgment (O.A.37/91) as follows:

A clarificatory order was issued on 21st May 1990 by the Division Bench to which I was a party, that since the applicant had got the same marks as those obtained by the 5th candidate in the panel and the validity of the panel is two years, the applicant should be appointed against the 6th regular vacancy arising within the period of validity of the panel."

By this, the applicant means that since the Tribunal used the word 'promotion' it must be deemed only as

regular promotion, and therefore, the promotion that has been given to the applicant from 1.3.85 by a subsequent order by the department must be deemed to be on regular promotion basis and as such a declaration to the effect that the promotions which has been effected in the case of the applicant from 1.3.85 must be treated as a regular one. Except this interpretation, he has not placed any further materials before the Tribunal to show that the vacancy that arose on 1.3.85 or the promotion given to the 4th respondent, his junior on 1.3.85 was for a regular vacancy.

9. From the materials placed before the Court, both in R-II namely, the plaint in OA 37/91 and also R-III Office Order dated 1.3.85 promoting the 4th respondent, clearly shows that the promotion that has been awarded to the 4th respondent is only ad-hoc and that too in the place of Shri Narayanan Namboodiri who has become sick. Further, the applicant even in the first O.A. namely, OA 358/86 has claimed that he has been superseded by the 4th respondent in getting ad-hoc promotion on 1.3.85 and further the tenor of arguments that has been made in OA 37/91 also is to the same effect namely, ad-hoc promotion. Following is the observations made by the 3rd Member:

"This negative compensation, however, does not make up the monetary loss which the applicant has unduly suffered by his supersession for ad-hoc promotion on 1.3.85."

From this it is clear that on 1.3.85 the vacancy arose is only a temporary vacancy which was filled up by promoting 4th respondent in an ad-hoc manner. This is further fortified by the very same order passed in CPC 36/90 in OA 358/86 which runs as follows:

"The learned counsel for the respondents unambiguously stated that the applicant has since been appointed against the sixth regular vacancy with effect from 1.2.87 arising from a retirement. In accordance with our clarificatory order dated 21.5.90 the applicant was entitled to be appointed against the sixth regular vacancy, which direction has been complied with by the respondents. The applicant's grievance is that even before the sixth regular vacancy arose there was another vacancy arising out of deputation against which instead of the applicant another person who was not even in the panel was appointed on an ad hoc basis. If the applicant is aggrieved by the appointment of that person on ad-hoc basis, he is at liberty if so advised to file an Original Application in accordance with law." (Annexure A2)

10. Again the 3rd Member in his judgment in OA 37/91 dated 10.6.92 in para-6 says as follows:

"6. I agree with my learned brother Shri NV Krishnan, Administrative Member that the question of a regular vacancy not being available before 1.2.87 for the applicant, was concluded by the earlier orders of this Tribunal, but he has gone on to say that while the applicant may have a case for regular promotion in preference to respondent-4 had a clear

vacancy been available before 1.2.87, the applicant cannot claim superior right over respondent-4 for ad-hoc promotion."

11. All these clearly show that the promotion that has been effected on 1.3.85 was only an ad-hoc promotion given to 4th respondent and the vacancy is not a regular vacancy, but only a leave vacancy as seen from Annexure-R3. Further from R-1 it is seen that O. Gopalakrishnan has been appointed as Commercial Inspector purely on ad-hoc basis and his lien on his substantive post on the Railway has to be retained for the period of his temporary deputation to the Ministry. Considering all the facts and circumstances of the case, we are of the opinion that the vacancy which arose on 1.3.85 was only a leave vacancy, and as such it cannot be deemed as a regular vacancy as claimed by the applicant. We are not agreeable to the observations of the Bench made in OA 37/91 that supersession could not be made even for ad-hoc promotion, since the same is per incuriam and is against the principles laid down in several decisions of the Apex Court in this regard.

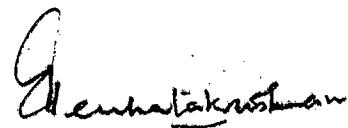
12. We see no merit in the case filed by the applicant. Therefore, the application is dismissed as devoid of merits and costs of Rs 500/- (Rupees five hundred only) to be paid by the applicant to the

respondents counsel for 1, 2, 3 and 5. Time to pay the costs two months.

Dated the 24th day of January, 1995.



P. SURYAPRAKASAM
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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